



No. 83-373
IN THE
Supreme Court of the United States

October Term, 1983

REVEREND W. EUGENE SCOTT, Ph.D.,

Petitioner,

vs.

JOEL ROSENBERG, WILLIAM B. RAY, JEFFREY MALICKSON,
WALLACE JOHNSON, and ARTHUR L. GINSBERG,

Respondents.

REPLY BRIEF OF PETITIONER.

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Throughout the course of this action, Respondents have sought to confuse and obfuscate the real issues contained in the Petition. This attempt at confusion is continued and amplified in the Respondents' Memorandum in Opposition.

Central to the scheme is the continuing litany of the Respondents that the only instance in which their actions affected any possible constitutional rights occurred during their investigation of the church which petitioner pastors and not because of Respondents' intrusion into Petitioner's own *personal* constitutional rights.

Respondents argue that no violation of the principles enunciated in *Sherbert v. Verner*, 374 U.S. 398 (1963) occurred because they took care not to unreasonably interfere with the rights of the *Church* during an entirely separate action. Thus, they build their house on the sand of the Court of Appeals' error, for no regard whatsoever was given to

the rights of Petitioner during the government's investigation of the Church. Yet, the Court of Appeals has already stated that Petitioner possesses the requisite standing to seek redress for the violation of those rights, and that those rights were violated. (Pet. App. 3;16) In spite of this adjudication, Respondents submit as an "Additional Citation" a decision relevant only to the Federal Communication Commission's investigation of the licensee Church, not violation of Petitioner's rights. Thus were the principles enunciated in *Sherbert* violated. By focusing on the investigation of the Church and not upon the separate violation of Petitioner's rights by Respondents' investigation of *him*, neither the District Court nor the Court of Appeals ever examined the possibility of a less entangling alternative to the violation of *Petitioner's* rights. It can only be assumed that this continuing obfuscation is by design on the part of the Respondents.

Likewise, by confusing the rights of Petitioner with the rights of the Church that he pastors, the District Court allowed Petitioner's action to be dismissed with no discovery whatsoever. Standing was the be all and end all of the District Court's adjudication, and the flow can be seen by reading the Findings of Fact and Conclusions of Law (Opp. at 1a, *et seq.*). Respondents argue that the "court of appeals itself [']examine[d] the record to determine if there is any genuine factual dispute whether the government employees violated [petitioner's] first amendment rights[']". (Opp. at 7) Yet, as in this instant action, where a Court of Appeals purports to examine a record that *was never allowed to exist*, and create an adjudication of Petitioner's rights *ex nihilo*, the Court fails to grant to Petitioner his guaranteed right of due process of law. (*Speiser v. Randall*, 357 U.S. 513 [1958].)

Had that record been examined, the alleged accusations of the sole complainant Diederich would have been shown

to be specious. The record would also have shown that even those specious accusations were later recanted by Diederich himself.

For each of the foregoing reasons, a Writ of Certiorari should issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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